



EX PARTE COMMUNICATION

March 24, 2014

Ms. Marlene H. Dortch
Secretary, Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: **Notice of Ex Parte Communication** in the Matter of WC Docket No. 13-184

Dear Ms. Dortch,

On March 21, 2014, Tom Koutsky and Raquel Noriega of Connected Nation met with Jon Wilkins, Trent Harkrader, Lisa Hone, and Mark Walker of the Commission to discuss Connected Nation's proposals for the E-Rate program modernization as outlined in Connected Nation's filings on the record and summarized in the enclosed presentation. On March 22, 2014, Tom Koutsky and Lisa Hone had a follow-up telephone conversation to discuss these same topics.

Among the proposals that Connected Nation put forward is the need to prioritize E-rate funding to support high-speed broadband access to schools and libraries, to support wireless connectivity throughout the institutions' premises, and to support connectivity to student electronic devices both on- and off-campus. Wireless connectivity to student devices is essential for the implementation of interactive, collaborative 1:1 learning models that allow students to access classroom content both on- and off-campus. As the Commission and U.S. Department of Education specifically noted in the 2012 Digital Textbook Playbook, "digital learning cannot only happen at school. To accomplish truly ubiquitous learning, students must be able to connect outside the school walls."¹

During the meeting and phone call, Commission staff asked about the Commission's statutory authority to provide E-rate funding for off-campus connectivity for educational purposes of student devices. Section 254(h) of the Act, 47 U.S.C. § 254(h), establishes the E-rate program and does not require that all services supported by E-rate be limited to those available only in "classrooms." In particular, Section 254(h)(1)(B) emphasizes that the critical factor governing E-rate eligibility is whether the service in question is used "for an educational purpose":

All telecommunications carriers serving a geographic area shall, upon a bona fide request for any of its services that are within the definition of universal

¹ Digital Textbook Collaborative, *Digital Textbook Playbook* (Feb. 1, 2012) at 30 available at http://transition.fcc.gov/files/Digital_Textbook_Playbook.pdf.

service under subsection (c)(3) of this section, provide such **services to elementary schools, secondary schools, and libraries for educational purposes** at rates less than the amounts charged for similar services to other parties.²

Section 254(c)(3) provides that, in designating services eligible for E-rate support, the Commission is to consider whether those services advance the “purposes of subsection (h)(3).”

Commission staff asked whether Section 254(h)(2) limits E-rate support solely to services for “classrooms.” Section 254(h)(2) provides:

The Commission shall establish competitively neutral rules—

(A) to enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services **for all public and nonprofit elementary and secondary school classrooms**, health care providers, and libraries . . .⁴

While Section 254(h)(2) requires the Commission to “enhance” access to advanced telecommunications and information services in “school classrooms,” it would be incorrect to infer that 254(h)(2) **prohibits** the Commission from designating as eligible for E-rate funding any service for elementary and secondary schools that are not “advanced telecommunications and information services” to “classrooms.” Reading 254(h)(2)(B) in this way would call into question substantial swaths of the existing E-rate program, including all dialtone services (which are not “advanced” and do not always serve a classroom directly), as well as services to administrative and support staff both on and off campus. Those services have been funded by the E-rate program when they meet an “educational purpose,” even if they are not an advanced service that directly reaches a classroom.

A plain reading of the statute suggests why the Commission has wisely interpreted Section 254(h)(2) in this way. Section 254(h)(2) simply says that the Commission shall establish competitively neutral rules “**to enhance . . .** access to advanced telecommunications and information services for all public and nonprofit elementary and secondary school classrooms...”⁵ To “enhance” access is “to increase or improve in value, quality, desirability, or attractiveness” of that access.⁶ A Commission rule (such as designating a service for E-rate

² 47 U.S.C. § 254(h)(1)(B) (emphasis added).

³ 47 U.S.C. § 254(c)(3) (“In addition to the services included in the definition of universal service under paragraph [Section 254(c)](1), the Commission may designate additional services for such support mechanisms for schools, libraries, and health care providers for the purposes of subsection (h) of this section.”).

⁴ 47 U.S.C. § 254(h)(2)(A) (emphasis added).

⁵ *Id.*

⁶ “Enhance.” *Mirriam-Webster.com*. Mirriam-Webster, n.d. Web Mar. 24, 2014.

reimbursement) need only improve the value, quality, desirability, or attractiveness of access to advanced services in classrooms to satisfy the requirements of Section 254(h)(2)(A). A plain reading of the statute, therefore, demonstrates that the proper inquiry is whether E-rate support of off-campus connectivity of institution-provided, student electronic learning devices would “enhance” access to advanced telecommunications and information services in the classroom.

As Connected Nation discussed during our *ex parte* meeting, E-rate support for off-campus connectivity to institution-provided student devices is not a nice-to-have component of 1:1 educational models. Rather, that connectivity is an essential element necessary for both student and educators to take full advantage of the opportunities of today’s digital and mobile learning technologies.

Indeed, educators seeking to implement 1:1 learning models effectively are addressing first and foremost the necessary connectivity within the school premise. But for these models to be effective and equitable – and, therefore, viable and valuable for a school – educators also need to ensure that **all** students will be able to have adequate access to and be able to interact with educational materials once they leave the school premise. In the past, that meant that each student would be able to take his or her own textbook home. In a 1:1 blended educational model, each student needs to have access to an educational device that is able to deliver interactive content and enable collaborative learning both inside and outside of the school premise. Failure to do so will mean failure of implementation of 1:1 educational models. The quality and value of the 1:1 educational classroom experience for students – indeed, quite possibly the very implementation of these models in the classroom – is directly affected by whether these devices can be used and connected both on and off campus for **all** students.

This is a real challenge many educators face today. Currently, the home broadband adoption gap serves as a barrier to aggressive deployment of 1:1 learning devices by schools, particularly those in low-income communities where a substantial number of students do not have broadband connectivity at home and will not be able to take advantage of the full features and collaborative functionalities of 1:1 learning devices the moment they leave the school campus. As more districts move to 1:1 educational initiatives, the achievement gap between wealthier school districts that do not have to worry about at-home or off-campus student connectivity and those districts that cannot afford to resolve the off-campus connectivity challenge will widen. In time, a pervasive broadband adoption gap among low-income populations could become an educational achievement gap.

Indeed, some school districts have opted not to implement aggressive 1:1 educational initiatives because these educators know that many students (if not the majority in low-income neighborhoods) will be unable to use the full features and functions of those devices. In those situations, the gap in off-campus connectivity is directly serving as a barrier to the adoption and

proliferation of these advanced services on campus and in the classroom. This is precisely the type of technology adoption and resulting achievement gap that E-rate was designed to bridge.

In the past, the Commission has not interpreted Section 254(h)(2) as requiring that E-rate be limited to “advanced telecommunications and information services” that solely and directly connect classrooms. Instead, the Commission has more broadly focused on whether the service in question meets the requirement in Section 254(h)(1)(B) that it serve an “educational purpose.” As mentioned above, throughout the life of the E-rate program, the Commission has regularly determined, for instance, that services such as connectivity to support and administrative staff, non-advanced services such as dialtone capability, and, in some cases, off-campus connectivity, can be eligible for E-rate support consistent with the statute.

In 2003, the Commission established the current definition of “educational purpose” specifically to articulate the conditions under which E-rate would fund services that “support staff not involved in instructional activities.”⁷ In doing so, the Commission defined “educational purpose” to include “activities that are integral, immediate, and proximate to the education of students or the provision of library services to patrons.” The Commission clarified that “[a]ctivities that occur on library or school property are presumed to be integral, immediate, and proximate to the education of students or the provision of library services to library patrons.” This presumption of course does not rule out off-campus connectivity from eligibility. Indeed, in the very same Second Report and Order in 2003, the Commission specifically decided that off-campus connectivity to staff could be eligible in certain instances, such as connectivity on school field trips and at sporting events.⁸ If E-rate can support the off-campus connection of a football coach’s digital playbook, E-rate can certainly support the off-campus connection of a student’s digital textbook.

Even more directly, in 2010 the Commission established the “EDU2011/Learning On-The-Go” (LOGO) pilot program, which specifically funded off-campus wireless connectivity to institution-provided student educational devices.⁹ In doing so, the Commission recognized that it had authority to use E-rate funds to support off-campus access and waived the application of its cost allocation requirements to LOGO pilot program participants. Because the Commission cannot waive a statutory limitation, the granting of waivers from the current rules as part of the LOGO

⁷ *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Second Report and Order, FCC 03-101 (rel. Apr. 30, 2003) at ¶ 17.

⁸ *Id.* at ¶ 19.

⁹ *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Sixth Report and Order, FCC 10-175 (rel. Sep. 28, 2010) at ¶¶ 41-50. In doing so, the Commission noted that its current cost allocation rules that do not fund off-campus connectivity of these devices “may prevent full utilization of the learning opportunities that portable wireless devices, such as digital textbooks, can provide off campus and outside of regular school hours.” *Id.* at ¶ 41.



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pilot indicates that any “on-campus” limitation on device connectivity is a product solely of Commission rules, and not the product of Section 254 requirements.

In summary, Section 254(h)(2)(A) requires the Commission to write rules that “enhance access” to “advanced telecommunications and information services” in school “classrooms,” but that provision does not limit E-rate discounts **only** to advanced services to classrooms. The Commission has not operated the E-rate program in that way, and re-interpreting Section 254(h)(2)(A) in this manner would disrupt and call into question a great deal of the existing E-rate program.

Pursuant to Commission rules, please include a copy of this filing in the above-referenced docket. Should you have any questions, please feel free to contact us directly.

Sincerely,

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